

20 Am. Jur. 2d Counterfeiting Summary

American Jurisprudence, Second Edition | May 2021 Update

Counterfeiting

Marie K. Pesando, J.D.

[Correlation Table](#)

Summary

Scope:

This article discusses the elements of the crime of counterfeiting and of various related offenses, such as possession of counterfeit or counterfeiting equipment or materials. Included in the article is a discussion of the concurrent power of the federal and state governments to punish these offenses, as well as discussion of various procedural aspects of prosecuting these crimes.

Federal Aspects:

This article discusses the power granted to Congress under the United States Constitution to punish the offense of counterfeiting, as well as specific federal statutes creating and providing for the punishment of counterfeiting offenses.

Treated Elsewhere:

Counterfeit substances, see [Am. Jur. 2d, Drugs and Controlled Substances § 173](#)

Counterfeiting of bills of lading, see [Am. Jur. 2d, Carriers § 309](#)

Counterfeiting of citizenship and naturalization papers, see [Am. Jur. 2d, Aliens and Citizens §§ 2660, 2703, 2704](#)

Counterfeiting of money orders, see [Am. Jur. 2d, Post Office § 95](#)

Counterfeiting of passports, see [Am. Jur. 2d, Passports § 61](#)

Counterfeiting of patents, see [Am. Jur. 2d, Patents § 10](#)

Counterfeiting of trademarks, see [Am. Jur. 2d, Trademarks and Tradenames § 157](#)

Criminal law and procedure, see [Am. Jur. 2d, Criminal Law §§ 1 et seq.](#)

Criminal liability as a conspirator, see [Am. Jur. 2d, Conspiracy §§ 1 to 49](#)

Criminal liability as an aider and abettor or for an attempt to commit a crime, see [Am. Jur. 2d, Criminal Law §§ 1 et seq.](#)

Designation of counterfeit currency, see [Am. Jur. 2d, Money § 34](#)

Forgery, see [Am. Jur. 2d, Forgery §§ 1 et seq.](#)

Fraud, generally, see [Am. Jur. 2d, Fraud and Deceit §§ 1 et seq.](#)

Research References:

Westlaw Databases

[All Federal Cases \(ALLFEDS\)](#)
[All State Cases \(ALLSTATES\)](#)
[American Law Reports \(ALR\)](#)
[West's A.L.R. Digest \(ALRDIGEST\)](#)
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20 Am. Jur. 2d Counterfeiting I Refs.

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I. In General

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Research References

West's Key Number Digest

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20 Am. Jur. 2d Counterfeiting § 1

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I. In General

§ 1. Generally

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West's Key Number Digest

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The term "counterfeit" signifies the imitation of a genuine article having a resemblance intended to deceive and be taken for the original. In the context of federal and state statutes proscribing the counterfeiting of United States obligations or securities, counterfeiting is more precisely defined as the simulation of another document which is genuine.¹

Under federal law, a proper test for determining what constitutes a counterfeit item is whether the fraudulently produced piece bears such a likeness or resemblance to a genuine piece as is calculated to deceive an honest and unwary individual of ordinary observation and care when dealing with an individual understood to be upright and honest.²

A "fictitious" instrument or document, for purposes of the statute prohibiting the making and offering of fictitious instruments or documents purporting to be actual financial instruments issued under the authority of the United States,³ is a bogus document contrived to appear to be a financial instrument, where there is in fact no such genuine instrument and where the fact of the genuine instrument's nonexistence is presumably unknown by, and not revealed to, the intended recipient of the document.⁴

A state legislature's intent in promulgating a counterfeit statute is to protect the citizens of the state from being victimized by fraudulent conduct.⁵

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Footnotes

¹ [Richland Trust Co. v. Federal Ins. Co.](#), 494 F.2d 641 (6th Cir. 1974).

² [U. S. v. Lustig](#), 159 F.2d 798 (C.C.A. 3d Cir. 1947), judgment rev'd on other grounds, 338 U.S. 74, 69 S. Ct. 1372, 93 L. Ed. 1819 (1949).

As to application of the counterfeiting standard, see [§ 5](#).

- 3 18 U.S.C.A. § 514.
- 4 U.S. v. Heath, 525 F.3d 451 (6th Cir. 2008).
- 5 State v. Moffit, 230 W. Va. 635, 741 S.E.2d 860 (2013).

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20 Am. Jur. 2d Counterfeiting § 2

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§ 2. Power of federal government

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West's Key Number Digest

West's Key Number Digest, [Counterfeiting](#)  1.1

The United States Constitution specifies that Congress has the power to punish the offense of counterfeiting securities and current coins of the United States.¹ Moreover, Congress' constitutional power to "coin Money and regulate the Value thereof"² includes the authority to prohibit the alteration of genuine United States currency.³

Congress also has the power to provide for the punishment of passing and uttering counterfeit obligations or other securities, and for the punishment of the crime of possessing instruments of counterfeiting.⁴ The power of Congress to provide for the punishment of the counterfeiting of foreign money or foreign securities is also implied in the Commerce Clause of the Federal Constitution.⁵

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Footnotes

¹ U.S. Const. Art. I, § 8, cl. 6.

² U.S. Const. Art. I, § 8, cl. 5.

³ *U.S. v. Gayekpar*, 211 Fed. Appx. 533 (8th Cir. 2007).

⁴ *Baender v. Barnett*, 255 U.S. 224, 41 S. Ct. 271, 65 L. Ed. 597 (1921).

⁵ *U.S. v. Marigold*, 50 U.S. 560, 9 How. 560, 13 L. Ed. 257, 1850 WL 6862 (1850).

Congress also has the power to prevent and punish counterfeiting, within its jurisdiction, of the notes, bonds, and other securities issued by foreign governments under the constitutional provision granting Congress the power to define and punish offenses against the law of nations. *U.S. v. Kaye*, 251 F.2d 87 (2d Cir. 1958).

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§ 3. Power of state governments

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West's Key Number Digest

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Although the federal government has primary jurisdiction for prosecuting charges relating to counterfeiting, it is also a state crime. The federal statutes do not wholly occupy the field and the states have concurrent jurisdiction to prosecute.¹ The United States Code, in the sections relating to counterfeiting,² shows a clear intent not to deprive the states of jurisdiction by providing that nothing in this title may take away or impair the jurisdiction of the courts of the several states under their laws.³ There is nothing repugnant or contradictory to constitutional principles or to our federal system of government in the concurrent exercise of the power to impose sanctions on the counterfeiting of federal currency or the passing of counterfeit federal currency.⁴ Both the federal and state governments have the power to deal with the matter, the federal government for the purpose of protecting the purity of its currency, the states for the purpose of protecting their citizens against fraud.⁵

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Footnotes

- ¹ [U.S. v. Crawford](#), 657 F.2d 1041 (9th Cir. 1981).
State forgery statutes apply to counterfeit U.S. currency, even though U.S. currency is not specifically included in statutes' definition of "written instrument." [State v. Eberly](#), 332 P.3d 683 (Haw. Ct. App. 2014), cert. rejected, 2014 WL 3970640 (Haw. 2014).
A "note" as that term is used in the state counterfeiting statute, includes Federal Reserve notes issued by the Federal Reserve System. [State v. Moffit](#), 230 W. Va. 635, 741 S.E.2d 860 (2013).
The elements of issuing counterfeit United States currency are: (1) issuing counterfeit United States currency; and (2) knowledge that the United States currency is counterfeit. [Moore v. State](#), 198 Md. App. 655, 18 A.3d 981 (2011).
Federal statutes regarding counterfeiting did not preempt a state trial court's exercise of jurisdiction over a forgery prosecution based on possession of counterfeit United States currency with the intent to defraud. [State v. McMurry](#), 184 Ariz. 447, 909 P.2d 1084 (Ct. App. Div. 1 1995).

- 2 18 U.S.C.A. §§ 470 to 514.
- 3 State v. Scarano, 149 Conn. 34, 175 A.2d 360 (1961); Nastasi v. Aderhold, 201 Ga. 237, 39 S.E.2d 403 (1946).
- 4 State v. McMurry, 184 Ariz. 447, 909 P.2d 1084 (Ct. App. Div. 1 1995); State v. Scarano, 149 Conn. 34, 175 A.2d 360 (1961); Nastasi v. Aderhold, 201 Ga. 237, 39 S.E.2d 403 (1946).
- 5 State v. McMurry, 184 Ariz. 447, 909 P.2d 1084 (Ct. App. Div. 1 1995); State v. Scarano, 149 Conn. 34, 175 A.2d 360 (1961); Nastasi v. Aderhold, 201 Ga. 237, 39 S.E.2d 403 (1946).

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§ 4. Federal offenses

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A.L.R. Library

[Construction and application of 18 U.S.C.A. sec. 499 making it criminal offense to falsely make, forge, counterfeit, alter, tamper with, or misuse naval, military, or official passes or permits, 24 A.L.R. Fed. 189](#)

The United States Congress has enacted a number of statutes prohibiting counterfeiting and related activities.¹ In this regard, it is a federal offense to, as variously specified by statute, counterfeit, or, with the intent specified in the statutes, to utter, pass, possess, or sell, the following obligations or securities of the United States or of a foreign government:

- bonds and obligations of certain lending agencies of the United States²
- United States government transportation requests³
- foreign bank notes⁴
- coins or bars of gold, silver, and other metals⁵
- minor coins of the United States⁶

- tokens, paper, or other devices used as money or for automatic vending machines, turnstiles, parking meters, coin box telephones, and the like⁷
- postal money orders⁸
- postage stamps, postal cards, or stamped envelopes⁹
- foreign postage and revenue stamps¹⁰
- postmarking stamps¹¹
- seals of United States courts, or signatures of the judges or officers of such courts¹²
- the seal of any department or agency of the United States¹³
- letters patent granted or purporting to be granted by the President of the United States¹⁴
- military or naval discharge certificates¹⁵
- military, naval, or official passes or permits¹⁶
- naturalization or citizenship papers¹⁷
- bonds, contracts, bids, deeds, powers of attorney, and public records, for the purpose of defrauding the United States¹⁸
- documents pertaining to the entry or withdrawal of imports or to customs duties¹⁹
- ship's papers²⁰
- treasury checks or bonds or securities of the United States bearing falsely made or forged endorsements or signatures²¹
- securities of the states and private entities²²
- false or fictitious obligations²³

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Footnotes

- 1 18 U.S.C.A. §§ 471 to 514.
As to forgery offenses, generally, see *Am. Jur. 2d, Forgery* §§ 1 et seq.
- 2 18 U.S.C.A. § 493.
- 3 18 U.S.C.A. § 508.
- 4 18 U.S.C.A. §§ 482, 483.
- 5 18 U.S.C.A. §§ 485, 486.
Because Krugerrands are not in actual use or circulation as money within the United States, they do not fall within the ambit of 18 U.S.C.A. § 485. *U.S. v. Falvey*, 676 F.2d 871 (1st Cir. 1982).
Only coins intended for use as current money in United States are subject to the penalties of 18 U.S.C.A. § 486. *U.S. v. Falvey*, 676 F.2d 871 (1st Cir. 1982).
Whoever, within the United States, makes or brings therein from any foreign country, or possesses with intent to sell, give away, or in any other manner uses the same, except under authority of the Secretary of the

Treasury or other proper officer of the United States, any token, disk, or device in the likeness or similitude as to design, color, or the inscription thereon of any of the coins of the United States or of any foreign country issued as money, either under the authority of the United States or under the authority of any foreign government is subject to fine, as specified by statute. [18 U.S.C.A. § 489](#).

The provision in [18 U.S.C.A. § 489](#) which refers to coins of any foreign country issued as money must be construed as applicable only to coins of currently existing foreign countries and governments; thus, the statute is not applicable to coins constituting likenesses of certain coins of the former Kingdom of Hawaii. [U.S. v. Gertz, 249 F.2d 662 \(9th Cir. 1957\)](#).

[18 U.S.C.A. § 490](#).

[18 U.S.C.A. § 491](#).

[18 U.S.C.A. § 500](#).

[18 U.S.C.A. § 501](#).

[18 U.S.C.A. § 502](#).

[18 U.S.C.A. § 503](#).

That the construction of [section 503](#) includes any general purpose stamp which could be used for postmarking purposes does not render the statute unconstitutionally vague. [U.S. v. Maude, 481 F.2d 1062 \(D.C. Cir. 1973\)](#).

[18 U.S.C.A. § 505](#).

Neither financial loss nor gain is required element of [18 U.S.C.A. § 505](#). [U.S. v. Barber, 39 F.3d 285 \(10th Cir. 1994\)](#).

[18 U.S.C.A. § 506](#).

[18 U.S.C.A. § 497](#).

[18 U.S.C.A. § 498](#).

[18 U.S.C.A. § 499](#).

[18 U.S.C.A. § 1426](#).

[18 U.S.C.A. § 1426](#), which prohibits the uttering, selling, and disposing of false, forged, or counterfeited alien registration cards, prohibits not only the sale of false "green cards" as true or genuine, but also prohibits the sale of forged and counterfeited green cards without asserting that they were true or genuine. [U.S. v. Garcia-Geronimo, 663 F.2d 738 \(7th Cir. 1981\)](#).

[18 U.S.C.A. §§ 494, 495](#).

[18 U.S.C.A. § 496](#).

[18 U.S.C.A. § 507](#).

[18 U.S.C.A. § 510](#).

[18 U.S.C.A. § 513](#).

Conviction under statute proscribing possession of counterfeit or forged securities with intent to deceive does not require proof that defendant passed or attempted to pass securities in question. [U.S. v. Blood, 435 F.3d 612, 69 Fed. R. Evid. Serv. 391, 2006 FED App. 0037P \(6th Cir. 2006\)](#).

Checks drawn on fictitious personal accounts of a legitimate bank were instruments of "an organization," within meaning of [18 U.S.C.A. § 513\(a\)](#); checks bore bank's name and routing number, along with nonexistent account numbers, adding air of legitimacy to scheme, and, for purposes of the statute, check could belong to both individual account holder and banking entity purportedly issuing the check. [U.S. v. Hanson, 132 Fed. Appx. 981 \(3d Cir. 2005\)](#).

The federal statutory proscription, under [18 U.S.C.A. § 513\(a\)](#) against the possession of counterfeit state securities is constitutional. The making, uttering, or possession of counterfeited state securities is economic activity directly linked to interstate commerce. Thus, the federal statute prohibiting possession of counterfeit state securities does not exceed Congress's powers under the Commerce Clause, even though there was no jurisdictional element in the statute. [U.S. v. Hancock, 132 F. Supp. 2d 279 \(S.D. N.Y. 2001\)](#).

[18 U.S.C.A. § 514](#).

Defendant was not required to know that bogus Federal Reserve Notes in amount of \$500 million each in his possession were false and fictitious to be convicted of possessing false and fictitious government instruments with intent to defraud, and intent to pass, utter, present, offer, or sell instruments. [U.S. v. Bitao, 266 Fed. Appx. 536 \(9th Cir. 2008\)](#), referring to [18 U.S.C.A. § 514](#).

Defendant's marking of sight drafts drawn in favor of Internal Revenue Service (IRS) with words "NON-NEGOTIABLE" did not disqualify drafts from violating plain language of fictitious instrument statute prohibiting the passing of any false or fictitious instrument appearing to be an actual security or other financial instrument; documents appeared to be financial obligations issued under the authority of the United States, and posed a capacity to deceive. [U.S. v. Salman, 531 F.3d 1007 \(9th Cir. 2008\)](#).

The enactment of [18 U.S.C.A. § 514](#) did not preempt application of the statute prohibiting counterfeiting obligations or securities to false Federal Reserve notes of fictitious denomination. [Rundus v. Chertoff, 242 Fed. Appx. 143 \(5th Cir. 2007\)](#), referring to [18 U.S.C.A. §§ 474, 475](#).

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20 Am. Jur. 2d Counterfeiting § 5

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I. In General

§ 5. Federal offenses—Implements of counterfeiting

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West's Key Number Digest

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Federal law creates and punishes numerous offenses having to do with implements of counterfeiting, including:

- the making, using, or selling, of any plate, stone, or other thing which may be used or prepared to print any obligation or security of the United States¹ or of a foreign government²
 - making or possessing dies for counterfeiting United States³ or foreign coins⁴
 - possessing and making plates or stones for government transportation requests⁵
 - imitating, or using in an advertisement, a likeness or similitude of an obligation or security of the United States⁶
 - taking, procuring, possessing, or selling, without authority from the United States, an impression of tools used in printing, stamping, or impressing an obligation or security of the United States⁷
- Provision is also made for the forfeiture of counterfeiting paraphernalia.⁸

It is also a federal crime to print, photograph, or in any other manner make or execute any engraving, photograph, print, or impression in the likeness of any obligation or other security of the United States, except by direction of a proper federal officer.⁹ An exception to this prohibition exists for the printing or publishing of illustrations of obligations or other securities of the United States, provided generally that such illustrations are in black and white and are of a size less than three-fourths or more than 1 1/2 of the original.¹⁰ These color and size limitations are not unconstitutional as violating a magazine publisher's freedom of expression.¹¹

Footnotes

- 1 [18 U.S.C.A. § 474.](#)
Different results have been reached as to whether one-sided photocopies of United States currency constitute a violation of § 474. Compare [U.S. v. Harrod](#), 168 F.3d 887, 1999 FED App. 0056P (6th Cir. 1999); [U.S. v. Turner](#), 586 F.2d 395 (5th Cir. 1978) (holding that creating one-sided black and white photocopies of five dollar bills and successfully feeding them into change machines with the purpose of obtaining real money met the requirement of "similitude," for purposes of the offense of possessing obligations made in whole or in part after the similitude of United States' obligations with intent to use same) with [U.S. v. Douglas](#), 213 F.3d 633 (4th Cir. 2000); [U.S. v. Ross](#), 844 F.2d 187, 99 A.L.R. Fed. 243 (4th Cir. 1988) (holding that black and white photocopies of one-dollar bills successfully used in change machines were not counterfeit obligations of the United States within the purview of federal counterfeiting statutes, as the photocopies could not deceive any individual as to their authenticity).
- 2 [18 U.S.C.A. § 481.](#)
- 3 [18 U.S.C.A. § 487.](#)
- 4 [18 U.S.C.A. § 488.](#)
- 5 [18 U.S.C.A. § 509.](#)
- 6 [18 U.S.C.A. § 475.](#)
The offense of imitating obligations or securities for advertisements under [18 U.S.C.A. § 475](#) is not a lesser included offense of the offense under [18 U.S.C.A. § 475](#) of using plates or stones for counterfeiting obligations or securities because the former offense includes as an element that there be an advertisement in existence, while the latter offense does not require such proof. [U.S. v. Eshkol](#), 108 F.3d 1025 (9th Cir. 1997).
- 7 [18 U.S.C.A. §§ 476, 477.](#)
- 8 [18 U.S.C.A. § 492.](#)
- 9 [18 U.S.C.A. § 474\(a\).](#)
- 10 [18 U.S.C.A. § 504\(1\).](#)
- 11 [Regan v. Time, Inc.](#), 468 U.S. 641, 104 S. Ct. 3262, 82 L. Ed. 2d 487 (1984).

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II. Elements of Offenses

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II. Elements of Offenses

§ 6. Generally

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West's Key Number Digest

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The crime of counterfeiting does not require that anyone actually has accepted the counterfeits.¹

The government need not show a defendant's physical transportation of counterfeit currency into the United States to establish criminal liability for bringing counterfeit currency into the United States under the applicable federal statute.²

Practice Tip:

Circumstantial evidence may be sufficient to support a finding of possession.³

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Footnotes

- ¹ [U.S. v. Barnes](#), 188 F.3d 893 (7th Cir. 1999).
- ² [U.S. v. Howick](#), 263 F.3d 1056 (9th Cir. 2001) (referring to 18 U.S.C.A. § 472).
- ³ [U.S. v. Bryant](#), 612 F.2d 806 (4th Cir. 1979) (holding that the defendant's receipt and possession of a money order could be inferred from the location of his palm prints beneath its two endorsements).

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20 Am. Jur. 2d Counterfeiting § 7

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II. Elements of Offenses

§ 7. Possession; constructive possession

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West's Key Number Digest

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Mere possession of counterfeit currency is not a crime;¹ possession must be conscious and willing in order to support a possession counterfeiting offense conviction.²

Direct physical control of counterfeit bills need not be shown in order to prove unlawful possession; constructive as well as actual possession is sufficient.³ Constructive possession, shown by ownership, dominion, or control over counterfeit obligations or other United States securities, is sufficient to constitute "possession" within the meaning of the various counterfeiting statutes.⁴ Constructive possession may be established under a wide variety of circumstances.⁵ When seeking to prove constructive possession by circumstantial evidence, the government must present evidence to show a connection between the defendant and the item in question.⁶

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Footnotes

- ¹ [U.S. v. Smith](#), 181 F. Supp. 2d 904 (N.D. Ill. 2002).
- ² [Baender v. Barnett](#), 255 U.S. 224, 41 S. Ct. 271, 65 L. Ed. 597 (1921) (holding that possession which is not conscious and willing is not made criminal by a federal code provision for the punishment of an individual who, without lawful authority, has in his possession any die in the likeness or similitude to a die designated for the manufacture or production of genuine coins of the United States).
- ³ [U.S. v. Pitts](#), 508 F.2d 1237 (8th Cir. 1974).
- ⁴ [U.S. v. Zink](#), 612 F.2d 511, 5 Fed. R. Evid. Serv. 1131 (10th Cir. 1980) (holding that "possession" within the meaning of 18 U.S.C.A. § 472 includes constructive possession, and the defendant remained in constructive possession of counterfeit money found in the glove compartment of his automobile at a time he left his automobile briefly at a car stereo installation business).

- 5 [U.S. v. Bolin, 35 F.3d 306 \(7th Cir. 1994\)](#) (holding that evidence of uncut sheets of counterfeit currency drying in plain view, as well as a large quantity of counterfeit bills and material found in a residence which the defendant shared with a codefendant, sufficiently supported a finding of constructive possession). The defendant's constructive possession of counterfeit bills was established by evidence showing that the automobile in which the bills were found was rented in the defendant's name and that the defendant drove it alternately with a codefendant while they stopped at roadside markets. [U.S. v. Sink, 586 F.2d 1041 \(5th Cir. 1978\)](#).
- The defendant's act of concealing counterfeiting materials immediately following his arrest in a motel room established actual dominion and control over the materials sufficient to support a conviction under [18 U.S.C.A. § 472](#). [U.S. v. Rodriguez, 761 F.2d 1339 \(9th Cir. 1985\)](#) (noting, however, that evidence which does not show any connection of an individual in a motel room with counterfeiting materials other than the ability to observe such materials is insufficient to support a conviction under [§ 472](#)).
- 6 [U.S. v. Mills, 29 F.3d 545 \(10th Cir. 1994\)](#).

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II. Elements of Offenses

§ 8. Passing or uttering

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[What constitutes uttering and passing counterfeit obligation or other security of the United States, with intent to defraud, under 18 USC sec. 472, 3 A.L.R.3d 1051](#)

Various federal statutes make it unlawful to pass or utter a counterfeit obligation or security of the United States knowing its counterfeit character.¹ In this context, courts have interpreted the terms "pass" and "utter" in the disjunctive and, consequently, have determined that the terms describe distinct crimes.² "Passing" is defined as using counterfeit obligations or securities in payment or exchange, or more simply, to offer as payment.³ An attempt to pass a falsely made obligation of the United States does not require similitude to an actual government obligation; it is sufficient that the government prove the instrument is falsely made and that it purports to be an obligation of the United States.⁴ The counterfeiting statutes did not require defendants to have passed or intended to pass counterfeit notes to persons, as opposed to machines.⁵

"Uttering" requires an intent or offer to pass a note, coupled with a declaration that it is good.⁶ In this regard, it has been said that to commit the substantive offense of uttering a forged United States Treasurer's check, there must be some attempt to circulate the check by means of a fraudulent representation that it is genuine.⁷ "Uttering" does not require presentation at a bank for cashing, but only an attempt to circulate something as a genuine United States obligation or security.⁸ There is also authority for the proposition that for purposes of the offense of uttering a counterfeit foreign obligation under the applicable federal statute,⁹

an "utterance" is tantamount to an offer.¹⁰ Thus, only "uttering" requires that the prosecution establish the additional element of fraudulent representation as to the authenticity of the proffered counterfeit obligation or security.¹¹

To convict a defendant of passing a fictitious United States financial instrument, the government must prove that the defendant presented or offered a false or fictitious instrument, that the document appeared or purported to be an actual security or other financial instrument issued under the authority of the United States, and that the defendant did so with intent to defraud.¹² To convict a defendant on a theory of aiding and abetting in passing a fictitious United States financial instrument, the government must prove that an individual fraudulently passed a fictitious United States financial instrument, that the defendant knowingly and intentionally aided, counseled, commanded, induced, or procured the individual to commit the offense, and that the defendant acted before the crime was completed.¹³

Observation:

As a practical matter, the separate and distinct criminal offenses created by statutes which proscribe both the "passing" and "uttering" of counterfeit obligations or other United States securities grant the government the ability to secure a conviction under such a statute based solely on the defendant's act of "passing," wholly eliminating the need to prove any act of "uttering" and its attendant additional element of fraudulent representation.¹⁴

Practice Tip:

Although direct evidence of "passing" or "uttering" is often available to the government, in the form of a clerk's or cashier's testimony that he or she accepted counterfeit currency from the defendant as payment, the government may also rely on circumstantial evidence in order to establish either element.¹⁵

Under a state statute, the elements of uttering are: (1) the counterfeit instrument or document must be issued or published as true; (2) the party issuing or publishing must know that the instrument or document is counterfeit; and (3) the issuing or publishing must be done with the intent to defraud.¹⁶

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Footnotes

- 1 18 U.S.C.A. § 472 (uttering counterfeit obligations or securities), 18 U.S.C.A. § 473 (dealing in counterfeit obligations or securities), 18 U.S.C.A. § 479 (uttering counterfeit foreign obligations or securities), 18 U.S.C.A. § 483 (uttering counterfeit foreign bank notes), 18 U.S.C.A. § 486 (uttering coins of gold, silver, or other metal resembling United States or foreign coins), 18 U.S.C.A. § 490 (passing or uttering counterfeit minor coins), 18 U.S.C.A. § 500 (passing or uttering counterfeit money orders).

2 U.S. v. Williams, 669 F. Supp. 111 (D.N.J. 1987), order aff'd, 850 F.2d 142 (3d Cir. 1988).
3 U.S. v. DeFilippis, 637 F.2d 1370 (9th Cir. 1981) (defining "passing" as "putting off in payment or
exchange"); U.S. v. Williams, 669 F. Supp. 111 (D.N.J. 1987), order aff'd, 850 F.2d 142 (3d Cir. 1988).
Passing and possessing paper used as money is not a lesser-included offense of passing and possessing
counterfeit notes. U.S. v. Wethington, 141 F.3d 284, 1998 FED App. 0108P (6th Cir. 1998).
4 U.S. v. Hanzlicek, 187 F.3d 1228, 52 Fed. R. Evid. Serv. 1476 (10th Cir. 1999).
5 U.S. v. Taftsiou, 144 F.3d 287 (3d Cir. 1998).
6 U.S. v. DeFilippis, 637 F.2d 1370 (9th Cir. 1981).
7 U.S. v. Brown, 495 F.2d 593 (1st Cir. 1974).
8 U.S. v. Rivamonte, 666 F.2d 515 (11th Cir. 1982).
9 18 U.S.C.A. § 479.
10 U.S. v. Chang, 207 F.3d 1169, 54 Fed. R. Evid. Serv. 148 (9th Cir. 2000).
11 U.S. v. Hyatt, 565 F.2d 229, 2 Fed. R. Evid. Serv. 774 (2d Cir. 1977).
12 U.S. v. Wethington, 141 F.3d 284, 1998 FED App. 0108P (6th Cir. 1998); U.S. v. Pahl, 11 Fed. Appx. 882
(9th Cir. 2001).
13 U.S. v. Pahl, 11 Fed. Appx. 882 (9th Cir. 2001).
14 U.S. v. DeFilippis, 637 F.2d 1370 (9th Cir. 1981) (holding that the prosecution was not required to prove that
the defendant represented a counterfeit note as genuine in order to sustain a conviction under 18 U.S.C.A.
§ 472, inasmuch as passing alone is a valid basis for a conviction under the statute).
15 U.S. v. Chisem, 667 F.2d 1192 (5th Cir. 1982); U.S. v. Rice, 652 F.2d 521 (5th Cir. 1981); U.S. v. Sink, 586
F.2d 1041 (5th Cir. 1978); U.S. v. Tucker, 820 F.2d 234 (7th Cir. 1987).
16 Moore v. State, 198 Md. App. 655, 18 A.3d 981 (2011).

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20 Am. Jur. 2d Counterfeiting § 9

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Counterfeiting


Marie K. Pesando, J.D.

II. Elements of Offenses

§ 9. Intent to defraud

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Counterfeiting](#)  3, 17

In the context of counterfeiting statutes,¹ intent to defraud is defined as the specific intent to deceive or cheat for the purpose of causing financial loss to another, bringing about financial gain to oneself, or an intent to pass the counterfeit obligation or security as original.² The mere possession or passing of a counterfeit obligation or security is insufficient to support a conviction under such statutes because the requisite mens rea cannot be proven by a mere showing of possession or passing of the counterfeit item.³

To sustain a conviction under the section prohibiting passing or uttering an altered obligation or other security with intent to defraud, all the government must prove is that the defendant passed an altered or counterfeit bill, knew it was altered or counterfeit, and passed it with an intent to deceive.⁴ Proof of criminal intent is indispensable to proof of the offense of unlawful possession of counterfeit money.⁵

Intent to defraud may also be established by a showing of intent to defraud unknown third parties⁶ or the government.⁷ Intent to defraud does not require that the defendant intend to defraud an individual with whom he or she has directly transacted business,⁸ or that the defendant intend to deceive the immediate purchaser of the counterfeit obligation or other United States security.⁹

Intent to defraud may be difficult to establish when the quality of the counterfeit obligation or security is inferior.¹⁰ However, defendants who chemically blackened and then cleaned genuine currency to produce realistic "counterfeit" bills in an attempt to fool investors into believing they were producing high-quality counterfeit currency had "altered" the currency within the meaning of the statutes criminalizing alteration of currency with intent to defraud and possession of altered currency with intent to defraud.¹¹ Similarly, blackened currency that a defendant used to defraud victims, who agreed to advance money to purchase expensive chemicals to clean a purported fortune in blackened bills, qualified as "altered" U.S. currency, as required to sustain

a conviction of possessing altered U.S. currency with intent to defraud; blackening the currency made the currency different, without changing the currency into something else.¹²

Under the statute proscribing possession of counterfeit or forged securities,¹³ "intent to deceive" does not necessarily include intent to cause loss.¹⁴

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Footnotes

- 1 18 U.S.C.A. § 471, 18 U.S.C.A. § 472 (obligations or securities of the United States), 18 U.S.C.A. §§ 478 to 480 (foreign obligations or securities), 18 U.S.C.A. §§ 482, 483 (foreign bank notes), 18 U.S.C.A. § 485 (coins or bars), 18 U.S.C.A. § 490 (minor coins).
- 2 U.S. v. Snow, 670 F.2d 749, 9 Fed. R. Evid. Serv. 1524 (7th Cir. 1982).
The defendant could be convicted of conspiracy to make, receive, possess, sell, or otherwise transfer an implement designed for or particularly suited for making counterfeit or forged security, even though the blank checks he possessed and distributed for use by accomplices were in the name of a defunct corporation and drawn on a defunct bank; the provision under which the defendant was convicted did not require that the implement at issue be one for making security of any particular kind of entity, including an active organization. U.S. v. Pebworth, 112 F.3d 168 (4th Cir. 1997).
- 3 U.S. v. Combs, 672 F.2d 574 (6th Cir. 1982); U.S. v. King, 326 F.2d 415 (6th Cir. 1964); U.S. v. Perez, 698 F.2d 1168 (11th Cir. 1983); U.S. v. Maura, 778 F. Supp. 835 (D. Md. 1991).
The statute that prohibited use, "with intent to defraud," of phony financial instruments that purported to be actual securities issued under the authority of issuers including the United States did not impose strict liability on those who innocently uttered instruments that purported to be genuine obligations, and thus, it was not unconstitutionally vague on the ground that it created an unacceptably high risk that lawful activities of citizens would be criminalized. U.S. v. Summa, 2003 WL 21488093 (S.D. N.Y. 2003).
- 4 U.S. v. Chisem, 667 F.2d 1192 (5th Cir. 1982); U.S. v. DeFilippis, 637 F.2d 1370 (9th Cir. 1981); U.S. v. Perez, 698 F.2d 1168 (11th Cir. 1983).
- 5 Rodis v. City, County of San Francisco, 558 F.3d 964 (9th Cir. 2009) (specific intent crime); Holt v. U.S., 404 F.2d 914 (10th Cir. 1968).
- 6 U.S. v. Wyatt, 611 F.2d 568, 5 Fed. R. Evid. Serv. 769 (5th Cir. 1980).
- 7 Riggs v. U.S., 280 F.2d 750 (5th Cir. 1960).
- 8 U.S. v. Kurt, 986 F.2d 309 (9th Cir. 1993).
- 9 U.S. v. Anzalone, 626 F.2d 239 (2d Cir. 1980).
- 10 U.S. v. Hall, 801 F.2d 356 (8th Cir. 1986).
- 11 U.S. v. Wabo, 290 F. Supp. 2d 486 (D.N.J. 2003) (noting that showing that the defendants intended to produce any counterfeit notes or pass altered notes was unnecessary).
- 12 U.S. v. Idriss, 436 F.3d 946 (8th Cir. 2006).
- 13 18 U.S.C.A. § 513(a).
- 14 U.S. v. Blood, 435 F.3d 612, 69 Fed. R. Evid. Serv. 391, 2006 FED App. 0037P (6th Cir. 2006).

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20 Am. Jur. 2d Counterfeiting § 10

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Counterfeiting


Marie K. Pesando, J.D.

II. Elements of Offenses

§ 10. Intent to defraud—Circumstantial evidence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Counterfeiting](#)  3, 18

In a prosecution for knowingly possessing counterfeit federal reserve notes, intent may be proven through circumstantial evidence, including by showing that the defendant made misrepresentations to the victims with knowledge that the statements were false, and the defendant's knowledge may be inferred if the jury finds that a defendant deliberately ignored that which was obvious.¹ A defendant's knowledge that an obligation or security was counterfeit may be inferred from surrounding circumstances.²

The entire conduct of the defendant at the time the offense was alleged to have been committed is sufficient for a trial court to find that the defendant had the requisite mental state to be guilty of all counts in a prosecution charging violations of the provision against possessing and passing counterfeit bills.³ A wide variety of circumstances may establish guilty knowledge, including—

- the rapid and repeated passing of counterfeit obligations.⁴
- the repeated use of large counterfeit obligations in lieu of change received from prior purchases.⁵
- segregation of counterfeit currency from genuine currency.⁶
- possession of a large quantity of counterfeit currency.⁷
- utterance of counterfeit currency at several different establishments.⁸
- evidence of similar past counterfeiting acts.⁹
- an attempt to destroy, abandon, or conceal counterfeit currency when capture is imminent, or immediately after capture.¹⁰

Although evasive behavior by the defendant may support a conviction for uttering and possessing counterfeit securities of an organization,¹¹ testimony that a defendant, without inspecting the contents, simply accepted from the police informant a closed envelope which contained counterfeit money is insufficient to prove knowledge, intent, and concealment by the defendant.¹² Similarly, although unusual packaging or secreting of counterfeit currency may infer mens rea,¹³ a defendant's alleged familiarity with the genuine packaging of products from an automobile manufacturer did not establish that the defendant, who owned an auto parts surplus warehouse and was the warehouse distributor for the manufacturer, had knowledge that the parts received from the auto parts dealer, in counterfeit packaging, were counterfeit.¹⁴

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Footnotes

- 1 U.S. v. Scott, 159 F.3d 916 (5th Cir. 1998); U.S. v. Shabbar, 20 Fed. Appx. 394 (6th Cir. 2001).
The "ostrich" instruction, which informed the jury that they could infer knowledge from a combination of suspicion and indifference to the truth, was warranted by evidence that the defendant charged with passing counterfeit money had failed to question her sister's unexpected receipt of a large amount of money, all in \$50 bills, or the sister's representations that she could get more. U.S. v. Broeske, 178 F.3d 887 (7th Cir. 1999).
- 2 U.S. v. Lemaire, 712 F.2d 944, 13 Fed. R. Evid. Serv. 1506 (5th Cir. 1983); U.S. v. Staller, 616 F.2d 1284 (5th Cir. 1980); U.S. v. Castens, 462 F.2d 391 (8th Cir. 1972); U.S. v. Robinson, 523 F. Supp. 1006, 9 Fed. R. Evid. Serv. 505 (E.D. N.Y. 1981), aff'd, 685 F.2d 427 (2d Cir. 1982).
- 3 U.S. v. Darrow, 499 F.2d 64 (7th Cir. 1974).
- 4 U.S. v. Lemaire, 712 F.2d 944, 13 Fed. R. Evid. Serv. 1506 (5th Cir. 1983).
- 5 U.S. v. Rice, 652 F.2d 521 (5th Cir. 1981); U.S. v. Armstrong, 16 F.3d 289 (8th Cir. 1994).
- 6 U.S. v. Perez, 698 F.2d 1168 (11th Cir. 1983).
- 7 U.S. v. Slone, 601 F.2d 800 (5th Cir. 1979).
- 8 U.S. v. Grady, 665 F.2d 831, 9 Fed. R. Evid. Serv. 860 (8th Cir. 1981).
- 9 U.S. v. Johnson, 697 F.2d 735 (6th Cir. 1983).
- 10 U.S. v. Brown, 938 F.2d 1482, 33 Fed. R. Evid. Serv. 790 (1st Cir. 1991); U.S. v. Gonzalez, 617 F.2d 104 (5th Cir. 1980); U.S. v. Rodriguez, 761 F.2d 1339 (9th Cir. 1985).
- 11 U.S. v. Bowser, 15 Fed. Appx. 638 (10th Cir. 2001).
- 12 U.S. v. Jiminez-Serrato, 451 F.2d 523 (5th Cir. 1971).
- 13 U.S. v. Combs, 672 F.2d 574 (6th Cir. 1982).
- 14 U.S. v. Sultan, 115 F.3d 321 (5th Cir. 1997).

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20 Am. Jur. 2d Counterfeiting § 11

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Counterfeiting


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II. Elements of Offenses

§ 11. Similitude

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Counterfeiting](#)  4

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[What constitutes "counterfeit" obligation or security of United States within statutory provisions setting forth criminal penalty for uttering or dealing in counterfeit obligations or securities \(18 U.S.C.A. secs. 471, 472, 473\), 99 A.L.R. Fed. 251](#)

An element often required for conviction of a counterfeiting offense is that the counterfeit item have a resemblance or similitude with a genuine United States obligation or security,¹ or a likeness to the matter to be used for counterfeit purposes.²

There is, however, no similarity requirement for counterfeits in cases involving less recognizable instruments such as government checks and drafts.³ The "similitude requirement" has been adopted by virtually every court of appeals and requires proof that the fraudulent obligation bears such a likeness or resemblance to any of the genuine obligations or securities issued under the authority of the United States as is calculated to deceive an honest, sensible, and unsuspecting person of ordinary observation and care when dealing with a person supposed to be upright and honest.⁴ For purposes of determining whether a mark is counterfeit, the "identical or substantially indistinguishable" standard is to be construed more narrowly in a criminal context than in a civil context.⁵

A counterfeit document does not have to be an artistic triumph or so good an imitation as to baffle an expert, or even be entirely complete.⁶ While the imitation need not be perfect, the similarity must be sufficiently strong to deceive an individual using ordinary care.⁷ The fact that an expert could have determined that particular bills were counterfeit rather than genuine currency does not undermine a finding that the bills sufficiently resembled genuine currency.⁸

Whether there is sufficient similarity between the counterfeit item and a genuine item is a question of fact.⁹ A determination of whether a bill possesses similitude, as required for a true counterfeit, is a highly fact-intensive process, and the issue must be decided on a case-by-case basis.¹⁰ In determining whether allegedly counterfeit marks are "identical or substantially indistinguishable" from genuine trademarks, the trier of fact need not determine indistinguishability based on the marks as affixed to the actual goods, nor is there a requirement that the actual trademark owner testify in a criminal trial, or that the agent who conducted the investigation and seizure of the counterfeit merchandise be qualified as an expert in the particular type of product.¹¹ Counterfeit obligations or securities which fail to satisfy the similitude requirement may frustrate or preclude a showing of "intent to defraud."¹²

The similitude standard has been extended to the ability of a counterfeit bill or coin to deceive a mechanical device under some statutes,¹³ but not others.¹⁴

A counterfeit item may bear sufficient resemblance to a genuine obligation or security to satisfy the similitude standard even though the counterfeit item has not been completed. The nature of the deficiency, however, must be of an inconsequential or insignificant nature.¹⁵

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Footnotes

- 1 18 U.S.C.A. § 485 (coins or bars), 18 U.S.C.A. § 486 (uttering coins of gold, silver, or other metal), 18 U.S.C.A. § 490 (minor coins).
- 2 18 U.S.C.A. § 474 (plates or stones for counterfeiting obligations or securities).
18 U.S.C.A. § 472 applies to only documents that actually resemble actual, existing United States obligations or securities. *U.S. v. Turner*, 985 F. Supp. 2d 1311 (M.D. Ala. 2013).
- 3 *U.S. v. Rosnow*, 977 F.2d 399 (8th Cir. 1992).
- 4 *U.S. v. Mousli*, 511 F.3d 7 (1st Cir. 2007); *U.S. v. Chodor*, 479 F.2d 661 (1st Cir. 1973); *U.S. v. Taftsiou*, 144 F.3d 287 (3d Cir. 1998); *U.S. v. Ross*, 844 F.2d 187, 99 A.L.R. Fed. 243 (4th Cir. 1988); *U.S. v. Turner*, 586 F.2d 395 (5th Cir. 1978); *U.S. v. Wethington*, 141 F.3d 284, 1998 FED App. 0108P (6th Cir. 1998); *U.S. v. Hall*, 801 F.2d 356 (8th Cir. 1986); *U.S. v. Anderson*, 532 F.2d 1218 (9th Cir. 1976); *U.S. v. Johnson*, 434 F.2d 827 (9th Cir. 1970); *U.S. v. Cantwell*, 806 F.2d 1463 (10th Cir. 1986); *U.S. v. Prosperi*, 201 F.3d 1335, 53 Fed. R. Evid. Serv. 1413 (11th Cir. 2000); *U.S. v. Turner*, 985 F. Supp. 2d 1311 (M.D. Ala. 2013); *Boggs v. Bowron*, 842 F. Supp. 542 (D.D.C. 1993), judgment aff'd, 67 F.3d 972 (D.C. Cir. 1995).
- 5 *U.S. v. Guerra*, 293 F.3d 1279 (11th Cir. 2002).
- 6 *U.S. v. Mousli*, 511 F.3d 7 (1st Cir. 2007).
- 7 *U.S. v. Gomes*, 969 F.2d 1290 (1st Cir. 1992); *U.S. v. Brunson*, 657 F.2d 110, 9 Fed. R. Evid. Serv. 422 (7th Cir. 1981).
- 8 *U.S. v. Fera*, 616 F.2d 590 (1st Cir. 1980).
Bogus currency that can be detected by a skeptical examiner trained in detection of counterfeit currency may still be calculated to deceive an honest, sensible, and unsuspecting person of ordinary observation and care when dealing with a person supposed to be upright and honest. *U.S. v. Howick*, 263 F.3d 1056 (9th Cir. 2001).
- 9 *Boggs v. Bowron*, 842 F. Supp. 542 (D.D.C. 1993), judgment aff'd, 67 F.3d 972 (D.C. Cir. 1995).
Sight drafts, purporting to be drawn against United States Treasury funds, appeared to be "actual" financial instruments or documents, for purpose of the statute prohibiting the making and offering of fictitious instruments or documents purporting to be actual financial instruments issued under the authority of the United States; although none of the sight drafts were accepted by any of the intended recipients, the documents appeared to be real, and a representative from the Office of the Comptroller testified that the sight drafts had good physical quality, including an artificial watermark, and noted that their invalidity would

not necessarily be apparent from looking at them. [U.S. v. Anderson](#), 353 F.3d 490, 2003 FED App. 0455P (6th Cir. 2003).

10 [U.S. v. Wethington](#), 141 F.3d 284, 1998 FED App. 0108P (6th Cir. 1998).

11 [U.S. v. Guerra](#), 293 F.3d 1279 (11th Cir. 2002).

12 [U.S. v. Hall](#), 801 F.2d 356 (8th Cir. 1986).

13 [U.S. v. Turner](#), 586 F.2d 395 (5th Cir. 1978) (affirming a conviction under 18 U.S.C.A. § 474, where the defendant's bills deceived a change machine, notwithstanding the defendant's contention that black and white, one-sided photocopies of one dollar bills were too crude to constitute a counterfeit obligation as proscribed by the statute).

The defendant's actions of creating one-sided black and white photocopies of five dollar bills and successfully feeding them into change machines with the purpose of obtaining real money met the requirement of "similitude," for purposes of the offense of possessing obligations made in whole or in part after the similitude of United States' obligations with intent to use the same. [U.S. v. Harrod](#), 168 F.3d 887, 1999 FED App. 0056P (6th Cir. 1999).

14 [U.S. v. Ross](#), 844 F.2d 187, 99 A.L.R. Fed. 243 (4th Cir. 1988) (holding that black and white photocopies of one-dollar bills successfully used in change machines were not counterfeit obligations of the United States within the purview of 18 U.S.C.A. §§ 471, 472, as the photocopies could not deceive any individual as to their authenticity).

15 [U.S. v. Brunson](#), 657 F.2d 110, 9 Fed. R. Evid. Serv. 422 (7th Cir. 1981).

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20 Am. Jur. 2d Counterfeiting III A Refs.

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Counterfeiting

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III. Practice and Procedure

A. Indictment

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Counterfeiting](#)  15.1 to 17

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A.L.R. Index, Counterfeiting

A.L.R. Index, Indictments and Informations

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20 Am. Jur. 2d Counterfeiting § 12

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Counterfeiting

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III. Practice and Procedure

A. Indictment

§ 12. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Counterfeiting](#)  15.1 to 17

A defendant charged with a counterfeiting offense may validly waive a written indictment.¹ Otherwise, an indictment for a counterfeiting offense must fully describe the alleged counterfeiting act, or excuse the omission of such description by proper averments.² The indictment may set forth the offense using the language of the statute itself, but the indictment must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific counterfeiting offense charged.³ An indictment which fails to allege intent to defraud is fatally defective.⁴

In a prosecution for aiding and abetting uttering of counterfeit cashier's checks purportedly issued by a bank, knowing that the checks were counterfeit, the indictment was clearly insufficient where there was no allegation of the essential element of the offense that the counterfeit cashier's checks were instruments issued by a federally insured financial institution "authorized or acting under the laws of United States" at the time of the commission of the offense.⁵

A determination of whether an indictment for a counterfeiting offense is sufficient on its face is generally governed by a liberal standard. The indictment will be construed more liberally after the verdict than before, and every intendment is then indulged in support of sufficiency.⁶ Failure to allege within the indictment the names of individuals or entities who were the alleged victims of the counterfeit does not establish substantial prejudice sufficient to set aside a conviction.⁷

A posttrial modification of an indictment which changes the face amount of the note alleged to have been counterfeited is permissible insofar as it does not alter the essential or material elements of the crime charged.⁸

Depending on the phrasing of the statute under which the indictment is brought, separate violations may be charged for counterfeiting distinct items even when these actions were part of a single scheme or mechanism.⁹

A criminal complaint which charged defendant with forging United States currency was not jurisdictionally defective as a result of its failure to name the U.S. Treasury as the entity whose name was forged on the counterfeit bills. The complaint's description of the allegedly forged written instruments as counterfeit bills of U.S. currency adequately informed defendant of the nature of the charges against him as it was implied from a common sense reading of the complaint that the U.S. Treasury was the entity whose name was allegedly forged.¹⁰

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Footnotes

- 1 [McKinney v. U.S.](#), 172 F.2d 781 (9th Cir. 1949).
- 2 [U.S. v. Garcia-Geronimo](#), 663 F.2d 738 (7th Cir. 1981).
 Substance of intent-to-defraud element of charge of possession of counterfeit money was conveyed by indictment's language stating that defendant knowingly possessed counterfeit money with intent to "sell or otherwise use" such money, in that, by engaging in such conduct, defendant would necessarily knowingly defraud any unwitting recipient of fake bills, and therefore indictment was sufficient to withstand postverdict motion to arrest judgment based on indictment's failure to allege intent to defraud. [U.S. v. Williams](#), 129 Fed. Appx. 332 (8th Cir. 2005).
 Attached exhibits incorporated within the indictment may provide the proper averments. [Spencer v. Cox](#), 140 F.2d 73 (C.C.A. 8th Cir. 1944).
- 3 [U.S. v. Garcia-Geronimo](#), 663 F.2d 738 (7th Cir. 1981) (holding that an indictment that fails to apprise the defendant with reasonable certainty of the nature of the accusation is defective although it may follow the language of the statute).
- 4 [U.S. v. Barry](#), 2009-1 U.S. Tax Cas. (CCH) P 50206, 103 A.F.T.R.2d 2009-541, 2009 WL 139875 (M.D. Fla. 2009).
- 5 [U.S. v. Locklear](#), 97 F.3d 196 (7th Cir. 1996).
- 6 [U.S. v. Treadway](#), 748 F. Supp. 396 (W.D. N.C. 1990).
- 7 [Elrod v. U.S.](#), 503 F.2d 959 (5th Cir. 1974).
- 8 [Heisler v. U.S.](#), 394 F.2d 692 (9th Cir. 1968).
- 9 [Castaldi v. U.S.](#), 783 F.2d 119 (8th Cir. 1986) (stating that it is consistent with the congressional underpinnings of 18 U.S.C.A. § 501 to allow as a separate unit of prosecution the counterfeiting of each denomination of postage stamps even when several denominations are counterfeited as part of a common scheme).
 The operation of a printing machine designed to produce four separate and distinct counterfeit notes from one plate, ostensibly for the purpose of facilitating their circulation, constituted separate violations of 18 U.S.C.A. § 471. [U.S. v. LeMon](#), 622 F.2d 1022 (10th Cir. 1980).
- 10 [State v. Kepley](#), 245 P.3d 12 (Kan. Ct. App. 2011), unpublished.

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III. Practice and Procedure

A. Indictment

§ 13. Variance between allegations of indictment and evidence offered at trial

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West's Key Number Digest

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Any variance between the indictment and evidence proffered at trial which does not modify the elements of the counterfeiting offense charged will not vitiate a conviction unless the defendant suffered substantial prejudice as a result of the variance.¹ Thus, the failure of an indictment to expressly charge "causing" does not foreclose a subsequent conviction on a causation theory.² Variances insufficient to give rise to substantial prejudice include the transposition of the serial numbers of counterfeit currency in the indictment,³ and a discrepancy as to the date or dates alleged in an indictment and the commission or occurrence of a particular counterfeiting offense,⁴ although such a discrepancy may give rise to substantial prejudice if a statute of limitations issue is applicable.⁵

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Footnotes

- ¹ [U.S. v. DeBrouse](#), 652 F.2d 383 (4th Cir. 1981).
- ² [U.S. v. Howick](#), 263 F.3d 1056 (9th Cir. 2001) (holding that sufficient evidence supported the defendant's conviction for transporting counterfeit currency into the United States, despite an omission in the superseding indictment of language expressly charging the defendant for "causing" such transportation of counterfeit currency because the superseding indictment could be read to have so charged, the prosecution argued this, and the jury concluded this).
- ³ [U.S. v. Skelley](#), 501 F.2d 447 (7th Cir. 1974).
- ⁴ [U.S. v. Turpin](#), 317 Fed. Appx. 514 (6th Cir. 2009); [U.S. v. Kayfez](#), 957 F.2d 677 (9th Cir. 1992).
- ⁵ [U.S. v. Nunez](#), 668 F.2d 1116, 8 Fed. R. Evid. Serv. 1480 (10th Cir. 1981).

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III. Practice and Procedure

B. Evidence

§ 14. Generally

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In a prosecution for counterfeiting or a related offense, the government has the burden of proving the defendant's guilt beyond a reasonable doubt.¹ The burden requires that the government prove beyond a reasonable doubt each element of the particular offense.² To prove intent to defraud, as a requisite element of a counterfeiting conviction, the government may present evidence that the defendant passed or attempted to pass a false bill, and if the defendant is charged solely with possession of a false bill, evidence of similitude is probative of intent to defraud, such that the more similar a false bill is to genuine currency, the more likely the defendant intended to use it fraudulently to procure goods and services.³

Although the government's burden may be discharged by producing demonstrative evidence,⁴ indirect or circumstantial evidence may also satisfy the reasonable doubt standard.⁵ Circumstantial evidence of intent of knowingly possessing counterfeit federal reserve notes includes showing that the defendant made misrepresentations to the victims with knowledge that the statements were false, and the defendant's knowledge may be inferred if the jury finds that a defendant deliberately ignored that which was obvious.⁶ The requisite fraudulent intent required to support a conviction for possessing counterfeit obligations of the United States may be inferred from surrounding circumstances or circumstantial evidence and thus need not be proven directly.⁷ When a defendant is charged with passing or attempting to pass counterfeit, evidence of that act may easily be probative of the intent to defraud, but mere possession of a counterfeit bill of very poor quality might not give rise to such an inference where the charge is for mere possession, and the poor quality suggests that it would be unlikely to be accepted in a transaction.⁸

A defendant's conviction cannot be based solely on alleged extrajudicial incriminating statements; such evidence must be corroborated with independent evidence which tends to establish the reliability or trustworthiness of the extrajudicial statements.⁹ Thus, a conviction for counterfeiting United States currency with intent to defraud is supported by a defendant's confession that he had photocopied currency on his color copier and then tried to spend the fake bills at a store.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Evidence was sufficient to support conviction for uttering counterfeit federal reserve notes; defendant participated in counterfeit bill trafficking organization for several months before and after date of charged offense, surveillance video showed she purchased items using cash, by taking bill she used to purchase items from one pocket and depositing her change in different pocket, store manager testified that only bills that appeared on video to match counterfeit bills were those used by defendant and accomplice, and bills recovered from store's cash register were identified at trial as counterfeit. [18 U.S.C.A. § 472](#). [U.S. v. Kee, 628 Fed. Appx. 854 \(4th Cir. 2015\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S. v. Perez, 698 F.2d 1168 \(11th Cir. 1983\)](#).
The government must prove beyond a reasonable doubt that a defendant charged with possession of counterfeit currency knowingly possessed counterfeit money with the intent to defraud, in order to support a conviction. [U.S. v. Reed, 297 F.3d 787 \(8th Cir. 2002\)](#) (applying [18 U.S.C.A. § 472](#)).
- 2 [U.S. v. Litberg, 175 F.2d 20 \(7th Cir. 1949\)](#).
A finding that counterfeit notes were sufficiently genuine to be considered "counterfeit" within the meaning of the statutes was supported by evidence that one person believed the notes were genuine and that three of the bills had been successfully passed to at least one person and by physical examples of the notes which were admitted into evidence. [U.S. v. Taftsiou, 144 F.3d 287 \(3d Cir. 1998\)](#).
- 3 [U.S. v. Wethington, 141 F.3d 284, 1998 FED App. 0108P \(6th Cir. 1998\)](#).
- 4 [U.S. v. Berry, 599 F.2d 267 \(8th Cir. 1979\)](#).
Evidence supported a finding that false bills passed and possessed by the defendant were sufficiently similar to genuine federal currency to be deemed "counterfeit," as required for a counterfeiting conviction, where the bills were green in color, although not the identical green of genuine bills, and were printed on both sides; a government agent testified, as an expert, that the bills were counterfeit, though of poor quality; the arresting officer testified that he was not certain that the bill passed was false and had sought out more experienced money handlers to verify his suspicion; and a restaurant waitress and manager questioned the note's validity but still discussed whether it was real. [U.S. v. Wethington, 141 F.3d 284, 1998 FED App. 0108P \(6th Cir. 1998\)](#).
- 5 [U.S. v. Staller, 616 F.2d 1284 \(5th Cir. 1980\)](#); [U.S. v. Haggins, 545 F.2d 1009 \(5th Cir. 1977\)](#); [U.S. v. Robinson, 523 F. Supp. 1006, 9 Fed. R. Evid. Serv. 505 \(E.D. N.Y. 1981\)](#), *aff'd*, [685 F.2d 427 \(2d Cir. 1982\)](#).
A finding that the defendant was involved in passing counterfeit notes after his escape from prison was supported by sufficient evidence, including evidence that gloves with green ink residue were found in the van he was driving when arrested and that the manufacturing equipment had indications of recent use. [U.S. v. Nikrasch, 25 Fed. Appx. 570 \(9th Cir. 2001\)](#).
- 6 [U.S. v. Shabbar, 20 Fed. Appx. 394 \(6th Cir. 2001\)](#).
- 7 [U.S. v. Almeida, 748 F.3d 41 \(1st Cir. 2014\)](#), referring to [18 U.S.C.A. § 472](#).
- 8 [U.S. v. Mousli, 511 F.3d 7 \(1st Cir. 2007\)](#).
- 9 [Rachlin v. U.S., 723 F.2d 1373, 14 Fed. R. Evid. Serv. 1325 \(8th Cir. 1983\)](#) (holding that the defendant's extrajudicial admission that he had passed a counterfeit bill was adequately corroborated by the detailed nature of the admission and by the testimony of a bank teller that she discovered a counterfeit bill in a bank deposit made by the business at which the defendant said he had passed the bill).

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[U.S. v. Smith, 70 Fed. Appx. 359 \(7th Cir. 2003\).](#)

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§ 15. Uncharged crimes

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Notwithstanding the general rule against the introduction of evidence as to the commission of crimes not charged in the indictment, such evidence may be admissible in prosecutions for counterfeiting offenses to show such matters as intent, modus operandi, or lack of mistake.¹ The uncharged acts need not relate to counterfeiting.² Thus, evidence of earlier possession of counterfeit notes may be relevant to the later possession of similar notes.³

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- ¹ [U.S. v. Jardina](#), 747 F.2d 945, 16 Fed. R. Evid. Serv. 1254 (5th Cir. 1984); [U.S. v. Johnson](#), 697 F.2d 735 (6th Cir. 1983) (holding that evidence of an earlier indictment charging the defendants with engaging in illegal counterfeiting was admissible in order to establish the defendant's criminal intent).
- ² [Thompson v. U.S.](#), 144 F. 14 (C.C.A. 1st Cir. 1906) (holding that the introduction of testimony that the defendant had stated to a witness that he might be arrested for abortion and needed counterfeit money to be used as bail if he should be arrested for the abortion was relevant for the purpose of showing motive).
- ³ [U.S. v. Bowie](#), 232 F.3d 923, 55 Fed. R. Evid. Serv. 1448 (D.C. Cir. 2000) (holding that evidence of a defendant's prior acts related to an uncharged possession of counterfeit bills on an earlier date were relevant to the defendant's intent and knowledge with respect to the charged offense of possession of counterfeit bills, and thus were admissible as "other acts" evidence; the prior acts evidence decreased the likelihood that the defendant accidentally or innocently possessed counterfeit notes with respect to the charged offense, the government presented sufficient evidence for the jury to conclude that the defendant possessed and passed counterfeit currency on a prior date, and evidence was not more prejudicial than probative).

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§ 16. Admissibility of counterfeit items

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The discoloring of counterfeit bills as a result of fingerprint examination and analysis is not a bar to their admission into evidence.¹ The fact that a counterfeit obligation is stamped with the word "counterfeit" similarly does not affect its admissibility.²

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- ¹ [U.S. v. Berry](#), 599 F.2d 267 (8th Cir. 1979).
The evidence was sufficient to convict the defendant for counterfeiting and conspiracy to counterfeit with intent to defraud, despite the claim that the testimony of the criminals used to establish the case was so unreliable that no reasonable juror could rely on it; the credibility determination was for the jury, and there was other evidence of the defendant's guilt, including fingerprints on printing equipment. [U.S. v. Kelly](#), 204 F.3d 652, 53 Fed. R. Evid. Serv. 680, 2000 FED App. 0065P (6th Cir. 2000).
- ² [U.S. v. Wyatt](#), 611 F.2d 568, 5 Fed. R. Evid. Serv. 769 (5th Cir. 1980) (noting that a cautionary instruction had been provided to the jury).

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§ 17. Accomplice testimony

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The testimony of an accomplice alone may be sufficient to support a counterfeiting conviction.¹ A defendant at whose trial accomplice testimony is presented is generally entitled to a cautionary jury charge explaining the care to be given in considering such testimony.² However, the failure of the court to give such a cautionary instruction does not necessarily constitute reversible error.³ Further, the requirement of a cautionary instruction may be vitiated if the accomplice testimony is consistent, credible, and substantiated by demonstrative evidence.⁴

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Footnotes

- 1 [U.S. v. Fawcett](#), 115 F.2d 764, 132 A.L.R. 404 (C.C.A. 3d Cir. 1940).
The uncorroborated testimony of the defendant's accomplice that the defendant knew that counterfeit bills were being passed was enough to support a guilty verdict on charges of conspiracy to manufacture counterfeit United States obligations and aiding and abetting the passing of counterfeit obligations. [U.S. v. Maynard](#), 77 Fed. Appx. 183 (4th Cir. 2003).
- 2 [U.S. v. Bolin](#), 35 F.3d 306 (7th Cir. 1994).
- 3 [U.S. v. Brown](#), 938 F.2d 1482, 33 Fed. R. Evid. Serv. 790 (1st Cir. 1991).
- 4 [U.S. v. Brown](#), 938 F.2d 1482, 33 Fed. R. Evid. Serv. 790 (1st Cir. 1991).

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C. Defenses

§ 18. Entrapment

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The elements of a valid entrapment defense in the context of a counterfeiting prosecution are the same as in the context of prosecution for other crimes. A defendant must establish that the government induced him or her to commit the crime charged and that the defendant was not predisposed to commit that crime.¹ The defense of entrapment fails where the defendant maintained a readiness and willingness to commit the counterfeiting offense apart from government encouragement.² The defense will not lie if the defendant was predisposed to commit the crime, notwithstanding the government's role of providing the defendant the opportunity and means necessary to counterfeit.³ Five factors determine a defendant's predisposition to commit the crime:⁴

- (1) the character of the defendant;
- (2) whether the government originally suggested the criminal activity;
- (3) whether the defendant engaged in the criminal activity for a profit;
- (4) whether the defendant evidenced a reluctance to commit the offense; and
- (5) the nature of the inducement to commit the crime.

The fact that the government orchestrates the initial contact with the defendant does not automatically justify an entrapment instruction.⁵

Footnotes

- 1 [U.S. v. Carrasco](#), 887 F.2d 794, 29 Fed. R. Evid. Serv. 573 (7th Cir. 1989).
A defendant is entitled to a jury instruction on the issue of entrapment only upon a prima facie showing that the government conduct created a substantial risk that the offense would be committed by an individual reluctant if not wholly unwilling to commit the crime. [U.S. v. Hudson](#), 982 F.2d 160 (5th Cir. 1993).
As to entrapment, generally, see [Am. Jur. 2d, Criminal Law](#) §§ 203 to 223.
- 2 [U.S. v. Carrasco](#), 887 F.2d 794, 29 Fed. R. Evid. Serv. 573 (7th Cir. 1989) (wherein the circuit court affirmed the lower court's finding that the defendant was predisposed to commit various counterfeiting crimes despite the defendant's contention that the government induced his illegal action; however, the defendant represented a willingness to proceed with the illicit objective upon the availability of a counterfeit document manufacturer).
- 3 [U.S. v. Irving](#), 827 F.2d 390 (8th Cir. 1987); [U.S. v. Parr](#), 716 F.2d 796, 14 Fed. R. Evid. Serv. 228 (11th Cir. 1983).
However, an indictment for receiving counterfeit money with intent to pass it as genuine was dismissed, where a government agent, being informed of the defendant's desires, supplied him with counterfeit money and then arrested him. [U.S. v. Chisum](#), 312 F. Supp. 1307 (C.D. Cal. 1970).
- 4 [U.S. v. Carrasco](#), 887 F.2d 794, 29 Fed. R. Evid. Serv. 573 (7th Cir. 1989).
- 5 [U.S. v. Hill](#), 626 F.2d 1301 (5th Cir. 1980).

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§ 19. Outrageous government conduct

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[What conduct of federal law enforcement authorities in inducing or cooperating in criminal offense raises due process defense distinct from entrapment, 97 A.L.R. Fed. 273](#)

In order to establish a valid defense of outrageous government conduct in the context of a prosecution for counterfeiting, the defendant must establish that the conduct of law enforcement officials was so outrageous that the principles of due process bar the government from invoking judicial processes to secure a conviction.¹ The standard has also been stated as conduct rising to a level in which government participation is so "fundamentally unfair as to deprive the defendant of due process of law."² A finding that the defendant was predisposed to commit the counterfeiting crime charged negates the outrageous conduct defense.³ The mere fact that the government provided supplies and expertise which were instrumental in the ability of the defendant to consummate the counterfeiting crime does not establish the defense.⁴ Nor does the use by the government of known counterfeiters and convicted felons engaged in undercover work violate a defendant's due process rights.⁵

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Footnotes

¹ [U.S. v. Belzer, 743 F.2d 1213 \(7th Cir. 1984\).](#)

- 2 [U.S. v. Irving, 827 F.2d 390 \(8th Cir. 1987\)](#) (summarily rejecting the defense of outrageous government conduct, where the government's actions of obtaining a printing press and printing counterfeit currency were done at the defendant's behest and were primarily for his benefit).
- 3 [U.S. v. Belzer, 743 F.2d 1213 \(7th Cir. 1984\)](#).
- 4 [U.S. v. Gonzales, 539 F.2d 1238 \(9th Cir. 1976\)](#) (rejecting a claim of outrageous governmental conduct notwithstanding the active involvement of the government in the purchase of ink, a printing press, and other supplies).
- There was no outrageous government conduct where the defendant first contacted a government informer about purchasing counterfeit currency and, subsequently, another government agent offered to sell counterfeit currency to the defendant. [U.S. v. Milam, 817 F.2d 1113 \(4th Cir. 1987\)](#).
- 5 [U.S. v. Belzer, 743 F.2d 1213 \(7th Cir. 1984\)](#) (holding that the use of such informants, necessitated by the clandestine nature of criminal activities, is a constitutionally permissible practice).

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§ 20. Coercion

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Where criminal intent is an element of a counterfeiting offense, a defendant who acts under coercion does not have the criminal intent necessary to support a conviction for the offense.¹

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¹ [Johnson v. U.S.](#), 291 F.2d 150 (8th Cir. 1961).

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III. Practice and Procedure

D. Sentencing

§ 21. Generally

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Under various counterfeiting statutes, a single act or transaction may constitute separate and distinct offenses; where this is so, it is not improper to impose separate sentences for distinct offenses arising from a single act or transaction.¹ On the other hand, if an indictment for a counterfeiting offense erroneously charges a defendant with two offenses where only one offense is chargeable, the imposition of consecutive sentences is improper and subject to remand.²

A sentencing increase for the manufacture of counterfeit currency is warranted for a defendant convicted of possession of counterfeit currency, absent a showing that the bills were not so obviously counterfeit that they were unlikely to be accepted even if subject to minimal scrutiny.³

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Footnotes

- ¹ [Castaldi v. U.S.](#), 783 F.2d 119 (8th Cir. 1986).
- ² [U.S. v. Sanford](#), 673 F.2d 1070 (9th Cir. 1982).
- ³ [U.S. v. Mitchell](#), 176 Fed. Appx. 676 (7th Cir. 2006).

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